

**BOARD OF APPEALS CASE NO. 5138**

**\***

**BEFORE THE**

**APPLICANTS: George & Louise Swedo and  
Jeffrey Hoilman**

**\***

**ZONING HEARING EXAMINER**

**REQUEST: Variance to permit an existing  
dwelling with enclosed porch and deck within  
the required rear yard setback; 117 Bright Oaks  
Drive, Bel Air**

**\***

**OF HARFORD COUNTY**

**HEARING DATE: May 30, 2001**

**\***

**Hearing Advertised**

**Aegis: 4/18/01 & 4/25/01**

**Record: 4/20/01 & 4/27/01**

**\* \* \* \* \***

## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, George and Louise Swedo, and Co-Applicant, Jeffrey Hoilman, are requesting a variance, pursuant to Harford County Ordinance 6, Section 10.05, to permit an existing dwelling with an enclosed porch and deck less than the 40 feet from the rear property line (existing 27 feet for the dwelling, 26 feet for the enclosed porch and 22 feet for the deck), in an R3/CDP District.

The subject property is located at 117 Bright Oaks Drive, Bel Air, MD 21015, and is more particularly identified on Tax Map 56, Parcel 497. The subject property consists of 0.2167 acres, more or less, is presently zoned R3/Urban Residential, and is entirely within the First Election District.

Mr. Jeffrey Hoilman, Co-Applicant, appeared before the Hearing Examiner and indicated that he is under contract with George and Louise Swedo, to construct an enclosed porch and deck addition to the rear of the home. The existing enclosed porch is 12 feet by 20 feet and the proposed replacement will be a 12 foot by 20 foot patio room and a 6 foot by 12 foot deck. The witness indicated that this is a corner lot, therefore, subject to two front yard setbacks, which makes the property unique. In addition, the existing dwelling was placed well back beyond the front yard setback when originally constructed. Although Bright Oaks has similar lots and home placements in the neighborhood, each of these lots presents its own unique problems regarding additions. The witness pointed out that if this addition and deck were going to be placed on either of the adjoining properties, no variances would be required because those properties are not subjected to two front yard setbacks.

## **Case No. 5138 - George & Louise Swedo and Jeffrey Hoilman**

Mr. Hoilman did not believe any adverse impacts would result if this variance were granted to neighboring properties or property owners. Additionally, he did not feel that there would be any material detrimental impact to purposes or intent of the Harford County Code if this variance were granted. The witness indicated that the house to the rear will be about 70 feet away from these improvements when completed.

Mr. George Swedo appeared next and indicated that he is proposing to replace what he currently has and believes that this will be an upgrade to his property and will be an enhancement. Mr. Swedo stated that there was no other logical place to locate such a patio room and that the deck that was being added was really added to accommodate the barbeque grill and the steps that lead down into the yard. He pointed out that the deck area, which is the only new volume or addition to the house in terms of area used, is only a 6 foot by 12 foot decked area. Mr. Swedo indicated that there are a number of other homes in the Bright Oaks subdivision that have similar patio rooms and decks and that there are a number of decks substantially larger than the one he proposes. He did not believe that the grant of the variance and the construction of the deck would result in any adverse impacts to any of his neighbors. Mr. Swedo indicated that the house, when constructed, was situated at an angle and is subject to two front yard setbacks. Additionally, it was set well beyond the front yard setback, therefore further depleting the rear yard building envelope. If, in fact, one of the lot lines on his property were treated as a side yard, he would only be required to have a 10 foot setback and he would meet the requirements and not need this variance.

Mr. Anthony McClune appeared next on behalf of the Harford County Department of Planning and Zoning. Mr. McClune pointed out that this is a corner property, subject to two front yard setbacks and that it is this two front yard setback requirement that results in the need for a variance. In Mr. McClune's opinion, virtually any corner lot in Harford County can, in fact, be a unique situation because of the size of the lot and the dual front yard setback requirement that normally does not impact other non-corner lot properties.

## **Case No. 5138 - George & Louise Swedo and Jeffrey Hoilman**

The Department of Planning and Zoning, according to Mr. McClune, found that the property and circumstances regarding the location of the existing dwelling were unique and, further, that the requested sun room and small deck will be both similar to other structures located within the neighborhood, and will not create an adverse impact on adjacent lots or the intent of the Code.

Appearing in opposition to this request was Mr. Ameer Mikhail, who is an adjoining property owner. Mr. Mikhail indicated that his concern was that the addition will result in a very crowded condition, particularly the deck and not the replacement of the existing deck with an enclosed patio room. While Mr. Mikhail stated several times that he did not wish his neighbor to be unable to enjoy his property, he did feel that no setback variance should be allowed because, in his opinion, this deck area will result in noise that will be adverse to the use of his property.

### **CONCLUSION:**

The Applicants, George and Louise Swedo, and Co-Applicant, Jeffrey Hoilman, are requesting a variance, pursuant to Harford County Ordinance 6, Section 10.05, to permit an existing dwelling with an enclosed porch and deck less than the 40 feet from the rear property line (existing 27 feet for the dwelling, 26 feet for the enclosed porch and 22 feet for the deck), in an R3/CDP District.

The Maryland Court of Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by Court, the variance process is a two-step, sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties, such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.

## **Case No. 5138 - George & Louise Swedo and Jeffrey Hoilman**

2. The second step is a demonstration of whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Cromwell v. Ward, 102 Md. App. 691 (1995).

The Hearing Examiner finds that the subject property is unique and unusual in nature. It is a corner lot, subject to two front yard setbacks, and the house itself was located somewhat further back from the front property line than necessary and angled, which resulted in a severely reduced rear yard building envelope. Because of this, nearly any addition to the rear of the home will require a variance from the setback requirements stated in the Code. In the instant case, the Applicant proposes to replace an existing structure with an enclosed sun room, which will have no adverse impact at all and will occupy no additional area to the rear of the house than the existing structure does today. Additionally, a 6 foot by 12 foot wooden deck area will be attached to this patio room with a set of steps leading to the rear yard and will be used for a barbeque area.

While the adjoining property owner, Mr. Ameer Mikhail, stated he feared that this deck area would result in a crowded condition and noise that would impact his property, the Hearing Examiner believes that there is sufficient distance resulting even after construction of the proposed addition to buffer any adverse impacts from the neighboring property owners' property. In the opinion of the Hearing Examiner, there will be no adverse impacts resulting from the construction of the enclosure or the additional deck on any neighboring properties and that the proposed construction is compatible with other similar uses in this and other neighborhoods located and commonly found in Harford County.

Additionally, the Hearing Examiner finds that the Applicant's variance and resulting construction will not result in any material adverse impact or detriment to the purposes of the Harford County Code.

The Hearing Examiner, therefore, recommends approval of the requested variance, subject only to the condition that the Applicants obtain any and all necessary inspections and permits.

Date     JUNE 20, 2001

William F. Casey  
Zoning Hearing Examiner